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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 04, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAUL L.,

Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF
SOCIAL SECURITY,¹

Defendant.

No. 1:20-cv-03198-SMJ

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Before the Court are the parties' cross-motions for summary judgment. ECF No. 18, 23. Attorney D. James Tree represents Paul L. (Plaintiff); Special Assistant United States Attorney Heidi Triesch represents the Commissioner of Social Security (Defendant). After reviewing the administrative record and the briefs filed

¹ Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. See 42 U.S.C. § 405(g).

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
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1 by the parties, the Court grants Defendant's Motion for Summary Judgment and
2 denies Plaintiff's Motion for Summary Judgment.
3

4 JURISDICTION

5 Plaintiff filed an application for Supplemental Security Income on September
6 22, 2017, alleging disability beginning September 1, 2017, due to back injuries/pain,
7 Barrett's syndrome, bone spurs in both feet, hernia, right shoulder pain, torn
8 meniscus in the left knee, high blood pressure, and obesity. Tr. 71-72. The
9 application was denied initially and upon reconsideration. Tr. 98-106, 110-16. An
10 Administrative Law Judge (ALJ) held a hearing on December 10, 2019, Tr. 31-69,
11 and issued an unfavorable decision on January 15, 2020. Tr. 15-25. Plaintiff
12 requested review by the Appeals Council and the Appeals Council denied the request
13 on September 14, 2020. Tr. 1-5. The ALJ's January 2020 decision became the final
14 decision of the Commissioner, which is appealable to the district court pursuant to
15 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on November 13,
16 2020. ECF No. 1.

22 STATEMENT OF FACTS

24 Plaintiff was born in 1965 and was 52 years old when he filed his application.
25 Tr. 71. He completed high school and worked as a construction day laborer for many
26 years. Tr. 194. Plaintiff also has worked buying and reselling farm equipment. Tr.
27 44-46, 194. At the time of the hearing, he and his wife owned and managed a farm.

1 Tr. 47. He testified that his wife did the majority of the work around the farm, and
2 that his back and other physical impairment prevented him from doing any strenuous
3 labor. Tr. 35-57.

5 **STANDARD OF REVIEW**

6 The ALJ is responsible for determining credibility, resolving conflicts in
7 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
8 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
9 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
10 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only
11 if it is not supported by substantial evidence or if it is based on legal error. *Tackett*
12 *v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as
13 being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put
14 another way, substantial evidence is such relevant evidence as a reasonable mind
15 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S.
16 389, 401 (1971). If the evidence is susceptible to more than one rational
17 interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*,
18 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595,
19 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or
20 if conflicting evidence supports a finding of either disability or non-disability, the
21 ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230

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ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
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1 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be
2 set aside if the proper legal standards were not applied in weighing the evidence and
3 making the decision. *Brawner v. Secretary of Health and Human Services*, 839 F.2d
4 432, 433 (9th Cir. 1988).

6 **SEQUENTIAL EVALUATION PROCESS**

8 The Commissioner has established a five-step sequential evaluation process
9 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*
10 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant bears
11 the burden of establishing a *prima facie* case of disability. *Tackett*, 180 F.3d at 1098-
12 1099. This burden is met once a claimant establishes that a physical or mental
13 impairment prevents the claimant from engaging in past relevant work. 20 C.F.R. §
14 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds to
15 step five, and the burden shifts to the Commissioner to show (1) the claimant can
16 make an adjustment to other work; and (2) the claimant can perform specific jobs
17 that exist in the national economy. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d
18 1190, 1193-94 (9th Cir. 2004). If a claimant cannot make an adjustment to other
19 work in the national economy, the claimant will be found disabled. 20 C.F.R. §
20 416.920(a)(4)(v).

1 ADMINISTRATIVE DECISION

2 On January 15, 2020, the ALJ issued a decision finding Plaintiff was not
3 disabled as defined in the Social Security Act. Tr. 15-25.
4

5 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
6 activity since the application date. Tr. 17.
7

8 At step two, the ALJ determined Plaintiff had the following severe
9 impairments: lumbar and thoracic degenerative disc disease, obstructive sleep apnea,
10 left shoulder degenerative joint disease, bilateral feet bone spurs, left heel achilles
11 tendon condition, torn bicep of the left arm, left knee degenerative joint disease, left
12 elbow tear of bicep tendon insertion site, and obesity. *Id.*
13

14 At step three, the ALJ found Plaintiff did not have an impairment or
15 combination of impairments that met or medically equaled the severity of one of the
16 listed impairments. Tr. 19.
17

18 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
19 he could perform light work, with the following additional limitations:
20

21 The claimant will be provided a sit/stand option in the workplace.
22 The claimant is capable of engaging in unskilled, repetitive
23 routine tasks in two-hour increments. He can occasionally
24 overhead reach with the left upper extremity. He can frequently
25 handle and finger. The claimant can occasionally stoop and
26 crouch but can never crawl, kneel, climb stairs and ramps, and
27 climb ladders, ropes, or scaffolds. The claimant should not
28 engage in balancing, working at heights, working in proximity to
hazardous conditions, or ambulating across uneven surfaces.

1 *Id.*

2 At step four, the ALJ found Plaintiff was unable to perform his past relevant
3 work as a construction worker, buyer, and maintenance mechanic. Tr. 23-24.

4 At step five, the ALJ determined that, based on the testimony of the vocational
5 expert, and considering Plaintiff's age, education, work experience, and RFC,
6 Plaintiff could perform jobs that existed in significant numbers in the national
7 economy, including the jobs of production assembler, cashier, and outside deliverer.
8

9 Tr. 24-25.

10 The ALJ thus concluded Plaintiff was not under a disability within the
11 meaning of the Social Security Act at any time from the application date through the
12 date of the decision. Tr. 25.

13 ISSUES

14 The question presented is whether substantial evidence supports the ALJ's
15 decision denying benefits and, if so, whether that decision is based on proper legal
16 standards.

17 Plaintiff contends the ALJ erred by (1) not properly assessing the grid rules,
18 (2) not properly assessing the listings, (3) not properly assessing Plaintiff's
19 testimony, (4) not properly assessing PA-C Richmond's reports, and (5) not
20 assessing Plaintiff's right shoulder disorder.

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DISCUSSION

1. Step Two

Plaintiff argues that at step two, the ALJ erred in failing to find his right shoulder disorder to be a severe impairment. ECF No. 18 at 20-21.

At step two of the sequential evaluation process, the ALJ must determine whether the claimant has any medically determinable severe impairments. 20 C.F.R. § 416.920(a)(ii). An impairment is “not severe” if it does not “significantly limit” the ability to conduct “basic work activities.” 20 C.F.R. § 416.922(a). Basic work activities are “abilities and aptitudes necessary to do most jobs.” 20 C.F.R. § 416.922(b). “An impairment or combination of impairments can be found not severe only if the evidence establishes a slight abnormality that has no more than a minimal effect on an individual’s ability to work.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (internal quotation marks omitted). The claimant bears the burden of demonstrating that an impairment is medically determinable and severe. *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009).

The ALJ identified a number of severe impairments at step two, including issues with Plaintiff's left shoulder, then found that all other impairments in the record were non-severe because they caused no more than minimal vocationally relevant limits, did not last for a sufficient duration, or Plaintiff responded to

1 treatment Tr. 18. The ALJ did not specifically identify any right shoulder conditions
2 in this general discussion. *Id.*

3 Plaintiff argues the ALJ erred in failing to discuss his right shoulder problems
4 and argues that imaging and the opinions of the consultative examiner and state
5 agency reviewing doctors establish Plaintiff's right shoulder condition as a severe
6 impairment. ECF No. 18 at 20-21. Defendant argues that even though the ALJ did
7 not specifically discuss Plaintiff's right shoulder in the step two discussion, he
8 adequately addressed the evidence later in the decision, noting that the imaging of
9 Plaintiff's shoulder was mild and he demonstrated intact strength and ability to
10 manipulate objects. ECF No. 23 at 2-5. Defendant further argues the ALJ adequately
11 discussed why greater limitations on Plaintiff's use of his right arm were not
12 warranted, and argues that Plaintiff did not challenge the ALJ's consideration of the
13 consultative examiner or the state agency doctors' opinions. *Id.*

14 The Court finds the ALJ did not err. Despite failing to discuss Plaintiff's right
15 shoulder condition at step two, the ALJ later noted the mild imaging results of
16 Plaintiff's right shoulder, and addressed the right upper extremity limitations
17 assessed by the consultative examiner and the state agency doctors. Tr. 21-23. The
18 ALJ's interpretation of the record as demonstrating no more than mild limitations is
19 reasonable. The Court also notes that the record contains only two notes of Plaintiff
20 reporting right shoulder pain and does not show any ongoing treatment or
21

1 consultations for this condition. Tr. 306-07, 368-69. The Court finds the ALJ's
2 discussion is sufficient.

3

4 **2. Step Three**

5 At step three of the sequential evaluation process, the ALJ considers whether
6 one or more of the claimant's impairments meets or equals an impairment listed in
7 Appendix 1 to Subpart P of the regulations. 20 C.F.R. § 416.920(a)(4)(iii). Each
8 Listing sets forth the "symptoms, signs, and laboratory findings" which must be
9 established for a claimant's impairment to meet the Listing. *Tackett v. Apfel*, 180
10 F.3d 1094, 1099 (9th Cir. 1999). If a claimant meets or equals a Listing, the claimant
11 is considered disabled without further inquiry. 20 C.F.R. § 416.920(d).

12

13 The ALJ found Plaintiff's conditions did not meet or equal any listed
14 impairment, and did not offer any detailed analysis of any specific Listing. Tr. 19.
15 Plaintiff argues the ALJ erred at step three when he failed to find Plaintiff's
16 conditions met or equaled Listing 1.02A² or 3.02C(3). ECF No. 18 at 5-7.

17

18 **a. Listing 1.02A – Major Dysfunction of a Joint**

19 Listing 1.02A requires a showing of:

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21 gross anatomical deformity (e.g., subluxation, contracture, bony
22 or fibrous ankylosis, instability) and chronic joint pain and
23 stiffness with signs of limitation of motion or other abnormal
24 motion of the affected joint(s), and findings on appropriate

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27 ² The musculoskeletal listings have been significantly revised since the ALJ issued
28 his decision. All discussion of Listing 1.02 refers to the former version of the
Listings, available at Program Operations Manual System (POMS) DI 34121.013

medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00 B2b;

20 C.F.R. Part 404, Subpart P, Appendix 1, §1.02. An inability to ambulate effectively is defined as:

an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

Id at 1.00B2b

1 Plaintiff argues the objective evidence regarding his severe foot, ankle, and
2 knee impairments, along with evidence of antalgic gait, limited and painful range of
3 motion, and poor flexibility all show a listing-level impairment. ECF No. 18 at 6.
4 He further asserts that the ALJ's RFC finding of no walking over rough or uneven
5 surfaces indicates an inability to ambulate effectively, consistent with the listing. *Id.*
6 Defendant argues that the record does not establish all of the criteria, and that there
7 is no evidence Plaintiff used an assistive device or had extreme limitations in his
8 ability to walk. ECF No. 23 at 7. Defendant further asserts that the limitation on
9 walking on uneven surfaces in the RFC does not establish Plaintiff was unable to
10 ambulate effectively. *Id.* Finally, Defendant asserts the ALJ was not required to
11 discuss possible listing equivalence unless the claimant presented medical evidence
12 to establish limitations equivalent to the listing, which Plaintiff did not do. *Id.* at 7-
13 8.
14

15 The Court finds the ALJ did not err. "A boilerplate finding is insufficient to
16 support a conclusion that a claimant's impairment" does not meet or equal a listed
17 impairment. *Lewis v. Apfel*, 236 F.3d 503, 512 (9th Cir. 2001). However, the ALJ is
18 not required to state why a claimant fails to satisfy every criteria of the listing if they
19 adequately summarize and evaluate the evidence. See *Gonzalez v. Sullivan*, 914 F.2d
20 1197, 1200-01 (9th Cir.1990); *Lewis*, 236 F.3d at 512. The ALJ sufficiently
21 discussed the available evidence, including evidence regarding Plaintiff's activities
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ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
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1 and the minimal objective evidence. Tr. 20-23. There is no evidence in the record
2 that Plaintiff uses an assistive device that limits the function of both hands and no
3 medical source has assessed limitations consistent with the listing. The ALJ's RFC
4 finding is not consistent with an inability to ambulate effectively. For these reasons,
5 Plaintiff has not presented evidence consistent with listing-level severity.
6

7

8 **b. Listing 3.02C – Chronic Respiratory Disorder**

9 Listing 3.02C(3), concerning chronic respiratory disorders, refers to chronic
10 impairment of gas exchange demonstrated by oxygen saturation levels less than or
11 equal to a value based on the altitude at the test site, measured by pulse oximetry
12 either at rest or during or after a 6-minute walk test. 20 C.F.R. Part 404, Subpart P,
13 Appendix 1, §3.02C(3). The introduction to the listing explains the various
14 requirements for the pulse oximetry testing, including that the claimant must be
15 medically stable at the time of the test; the measurements must be recorded on room
16 air without oxygen supplementation; the pulse oximetry measurement must be stable
17 over a 15-second interval; and the report must include the claimant's name, date of
18 test, the altitude or location of the test, and a graphical printout of the SpO₂ value
19 and pulse wave. 20 C.F.R. Part 404, Subpart P, Appendix 1, §3.00H.

20 Plaintiff argues that the results of a sleep study performed in Yakima,
21 Washington in August 2018 show listing-level oxygen saturation levels based on the
22 altitude. ECF No. 18 at 6-7. Defendant argues sleep-related breathing disorders are
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ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
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1 not evaluated under Listing 3.00, and instead are evaluated under other listings based
2 on the long-term effects the disorder may have on other body systems. ECF No. 23
3 at 8. Defendant further asserts that the record does not show the requisite level of
4 impairment to meet Listing 3.02C. *Id.* at 8-9.
5

6 The Court finds the ALJ did not err. Listing 3.00 specifically notes that sleep-
7 related breathing disorders, such as sleep apnea, are evaluated based on the
8 complications that result from prolonged transient episodes of interrupted breathing
9 during sleep, such as hypertension, heart failure, or disturbance in mood and
10 cognition. 20 C.F.R. Part 404, Subpart P, Appendix 1, §3.00P. Plaintiff has not made
11 any argument regarding ongoing complications from sleep apnea that impact other
12 body systems.
13

14 Furthermore, even if sleep apnea were a qualifying condition under Listing
15 3.02C, the record from the sleep study does not contain the requisite findings
16 regarding the pulse oximetry testing with respect to the stability of the measurements
17 over 15-second intervals or the required graphical display of SpO₂ and pulse wave.
18 Tr. 436-42. The record does not contain evidence of a listing-level breathing
19 disorder. Therefore, the ALJ did not err in failing to discuss the listing in detail.
20
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22 **3. Plaintiff's Symptom Statements**
23

24 Plaintiff alleges the ALJ erred in rejecting his symptom testimony without
25 providing adequate reasons. ECF No. 18 at 7-15.
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1 It is the province of the ALJ to make determinations regarding a claimant's
2 subjective reports. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).
3 However, the ALJ's findings must be supported by specific cogent reasons. *Rashad*
4 *v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative evidence of
5 malingering, the ALJ's reasons for rejecting a claimant's testimony must be
6 "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir.
7 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).

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9
10 The ALJ found Plaintiff's medically determinable impairments could
11 reasonably be expected to cause the alleged symptoms; however, he found Plaintiff's
12 statements concerning the intensity, persistence and limiting effects of his symptoms
13 were not entirely consistent with the medical evidence and other evidence in the
14 record. Tr. 20. Specifically, the ALJ found Plaintiff's allegations to be undermined
15 by the objective evidence, conservative and intermittent treatment, some
16 improvement with treatment, Plaintiff's activities, and his refusal of medication and
17 declining surgery. Tr. 20-22.

18
19 Plaintiff argues the ALJ's discussion is not an accurate reflection of the record
20 because the ALJ took facts out of context, exaggerated the level of Plaintiff's
21 activities, and failed to consider his reasonable explanation for not pursuing surgery.
22 ECF No. 18 at 7-15. Defendant argues the ALJ reasonably considered the objective
23 findings, Plaintiff's treatment, and his activities, arguing Plaintiff's alternative
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1 interpretation of the record does not render the ALJ's interpretation unreasonable.
2 ECF No. 23 at 9-13.

3 The Court finds the ALJ did not err. An ALJ may consider evidence of the
4 type and effectiveness of treatments received in assessing the reliability of a
5 claimant's symptom allegations. Social Security Ruling 16-3p. The ALJ noted
6 Plaintiff's treatment was largely conservative, and that he declined prescription
7 medications and surgery, which the ALJ found indicated his conditions were
8 manageable. Tr. 22. Furthermore, the ALJ considered Plaintiff's activities, including
9 his work on the family farm and fixing up farm equipment. A claimant's daily
10 activities may support an adverse credibility finding if the claimant's activities
11 contradict his other testimony. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007). The
12 Court finds the ALJ's interpretation of these activities as inconsistent with Plaintiff's
13 testimony of debilitating limits was reasonable.

14 Although it cannot serve as the sole ground for rejecting a claimant's symptom
15 statements, objective medical evidence is a "relevant factor in determining the
16 severity of the claimant's pain and its disabling effects." *Rollins v. Massanari*, 261
17 F.3d 853, 857 (9th Cir. 2001). The ALJ reasonably found the objective findings
18 throughout the record did not support the claimed extent of Plaintiff's limitations,
19 despite some findings of limitation based on the imaging. The Court finds the ALJ's
20 determination is supported by substantial evidence.

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1 **4. Medical Opinion Evidence**

2 Plaintiff argues the ALJ improperly disregarded the opinion from his treating
3 provider, PA-C Daniel Richmond. ECF No. 18 at 15-20.
4

5 For claims filed on or after March 27, 2017, new regulations apply that change
6 the framework for how an ALJ must weigh medical opinion evidence. Revisions to
7 Rules Regarding the Evaluation of Medical Evidence, 2017 WL 168819, 82 Fed.
8 Reg. 5844 (Jan. 18, 2017); 20 C.F.R. § 416.920c. The new regulations provide the
9 ALJ will no longer give any specific evidentiary weight to medical opinions or prior
10 administrative medical findings, including those from treating medical sources. 20
11 C.F.R. § 416.920c(a). Instead, the ALJ will consider the persuasiveness of each
12 medical opinion and prior administrative medical finding, regardless of whether the
13 medical source is an Acceptable Medical Source. 20 C.F.R. § 416.920c(c). The ALJ
14 is required to consider multiple factors, including supportability, consistency, the
15 source's relationship with the claimant, any specialization of the source, and other
16 factors (such as the source's familiarity with other evidence in the file or an
17 understanding of Social Security's disability program). *Id.* The regulations make
18 clear that the supportability and consistency of an opinion are the most important
19 factors, and the ALJ must articulate how they considered those factors in
20 determining the persuasiveness of each medical opinion or prior administrative
21 medical finding. 20 C.F.R. § 416.920c(b). The ALJ may explain how they
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1 considered the other factors, but is not required to do so, except in cases where two
2 or more opinions are equally well-supported and consistent with the record. *Id.*

3 Supportability and consistency are further explained in the regulations:

4
5 (1) Supportability. The more relevant the objective medical
6 evidence and supporting explanations presented by a medical
7 source are to support his or her medical opinion(s) or prior
8 administrative medical finding(s), the more persuasive the
9 medical opinions or prior administrative medical finding(s) will
be.

10
11 (2) Consistency. The more consistent a medical opinion(s) or
12 prior administrative medical finding(s) is with the evidence from
13 other medical sources and nonmedical sources in the claim, the
more persuasive the medical opinion(s) or prior administrative
medical finding(s) will be.

14
15 20 C.F.R. § 416.920c(c). Additionally, the Ninth Circuit has held that the new
16 regulatory framework displaces the longstanding case law requiring an ALJ to
17 provide “specific and legitimate” or “clear and convincing” reasons for rejecting a
18 treating or examining doctor’s opinion. *Woods v. Kijakazi*, 32 F.4th 785 (9th Cir.
20 2022).

21
22 On September 11, 2018, Plaintiff’s treating provider, Daniel Richmond,
23 completed a medical source statement, opining Plaintiff was severely limited and
24 unable to meet the demands of even sedentary work, and would be likely to miss
25 four or more days of work per month due to constant pain in his heels, left arm, right
26 shoulder, and spine. Tr. 360-62.
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1 The ALJ found this opinion not persuasive, noting Mr. Richmond used a
2 check box form and did not support the opinion with a detailed explanation, and
3 further found the opinion was not consistent with Plaintiff's active lifestyle or the
4 treatment records and findings of the consultative examiner. Tr. 23.

5 Plaintiff argues the opinion and accompanying records contain explanation
6 and support for the assessed limitations and that the ALJ failed to identify any
7 inconsistency between the opinion and the other records. ECF No. 18 at 15-20.
8 Defendant argues the ALJ reasonably considered the factors of supportability and
9 consistency, and found the opinion lacking in explanation, unsupported by the
10 treatment notes, and inconsistent with other opinions in the file and the majority of
11 the records. ECF No. 23 at 13-18.

12 The Court finds the ALJ did not err. With respect to supportability, the ALJ
13 reasonably found the opinion lacking in explanation, as Mr. Richmond's primary
14 explanation was to direct the reader to the treatment notes. Tr. 360-62. However,
15 Mr. Richmond's treatment notes contain few abnormal findings on exams other than
16 subjective tenderness. Tr. 278, 323, 324, 367-71, 379-84. The ALJ also considered
17 the opinion's consistency with evidence from medical and other sources, which he
18 had discussed in detail earlier in the decision. The Court finds the ALJ reasonably
19 complied with the revised rules and sufficiently considered the most important
20 factors of supportability and consistency.

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1 **5. Grid Rules**

2 Plaintiff asserts he should have been found disabled under the Medical
3 Vocational Guidelines because he is not capable of performing a full range of light
4 work, thus necessitating a finding of disability under the sedentary grid rules. ECF
5 No. 18 at 4-5. Defendant argues that, because Plaintiff's RFC fell between two grid
6 rules, the ALJ appropriately consulted a vocational expert, who identified jobs
7 Plaintiff was capable of performing. ECF No. 18 at 18-19.

8 At step five of the sequential evaluation process, the ALJ must determine
9 whether there are jobs that exist in significant numbers in the national economy that
10 the claimant can perform. *Tackett v. Apfel*, 180 F.3d 1094, 1100-01 (9th Cir. 1999).
11 The Medical Vocational Guidelines provide a streamlined mechanism for ALJs to
12 make this determination, considering the claimant's age category, educational and
13 work background, and exertional capability. 20 C.F.R. pt. 404, subpt P, app. 2.
14 However, use of the Guidelines is only appropriate when a rule completely and
15 accurately represents a claimant's limitations. *Tackett*, 180 F.3d at 1101. When a
16 claimant's residual ability falls between two grid rules that direct different outcomes
17 under the Guidelines, a vocational expert should be consulted to clarify the
18 implications for the occupational base. Social Security Ruling 83-12.

19 The Court finds no error. The ALJ found Plaintiff was capable of a limited
20 range of light work, with a sit/stand option and postural, environmental, and
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1 manipulative limitations. Tr. 19. While this does not allow for the full range of light
2 work, the RFC also does not indicate Plaintiff is capable of only sedentary level
3 work. The ALJ reasonably consulted a vocational expert, who identified light jobs
4 that exist in significant numbers that Plaintiff would be capable of performing. Tr.
5 65-66. The ALJ did not err in failing to apply the sedentary grid rules at step five.
6
7

8 CONCLUSION

9 Having reviewed the record and the ALJ's findings, the Court finds the ALJ's
10 decision is supported by substantial evidence and free of legal error.

11 Accordingly, **IT IS HEREBY ORDERED:**

13 1. Defendant's Motion for Summary Judgment, **ECF No. 23**, is

14 **GRANTED.**

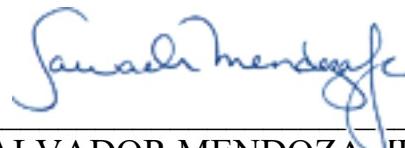
16 2. Plaintiff's Motion for Summary Judgment, **ECF No. 18**, is **DENIED**.

17 3. The Clerk's Office is directed to **ENTER JUDGMENT** for

19 Defendant and **CLOSE** this file.

20 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
21 provide copies to all counsel.

23 **DATED** this 4th day of August 2022.

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27 SALVADOR MENDOZA, JR.
United States District Judge
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